GAHC010067802026

2026:GAU-AS:7258

THE GAUHATI HIGH COURT

[THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH]

W.P.[C] NO. 2081/2026

Chandan Deka, Son of Late Uttam Chandra Deka, Resident of House No. 14, Amrit Nagar, Basistha Chariali, P.O. Beltola, P.S. Basistha Chariali, Kamrup [M], Guwahati, Assam – 781028.

.....Petitioner

-VERSUS-

1. The Union of India, Represented by the Secretary of Government of India, Ministry of Finance, Department of Revenue, Room No. 66, North Block, New Delhi - 110001.
2. The Principal Commissioner of Central Goods and Service Tax, Guwahati, GST Bhawan, Kedar Road, Machkhowa, Guwahati – 781001.
3. The Commissioner [Appeals], CGST, Central Excise and Customs, 3rd Floor, GST

Bhawan, Kedar Road, Machkhowa, Guwahati - 781001.

4. The Deputy Commissioner, CGST Commissionerate, Guwahati, Anti-Evasion Unit-II, Room No. 103, 1st Floor, GST Bhawan, Kedar Road, Machkhowa, Guwahati – 781001.

.....Respondents

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY

Advocates :

For the Petitioner	:	Mr. R.S. Mishra, Advocate
For the Respondent nos. 1 – 4	:	Mr. S.C., Special Counsel, & Special Counsel, CGST
Date on which judgment is reserved	:	Not Applicable
Date of pronouncement of judgment	:	20.05.2026
Whether the pronouncement is of the Operative part of the judgment ?	:	No
Whether the full judgment has been Pronounced ?	:	Yes

JUDGMENT & ORDER

1. Heard Mr. R.S. Mishra, learned counsel for the petitioner and Mr. S.C. Keyal, learned Senior Counsel & Special Counsel, Central Goods and Services Tax [CGST] for all the respondents.

2. The writ petition, instituted under Article 226 of the Constitution of India, has been preferred to assail an Order dated 03.08.2023 passed by the Commissioner [Appeals], CGST, Central Excise & Customs, Guwahati [‘the Appellate Authority, for short]. By the Order, the Appellate Authority had dismissed the appeal preferred by the petitioner under sub-section [3A] of Section 85 of the Finance Act, 1994 on the ground that presentation of the appeal was beyond time.

3. The background facts, shorn of unnecessary details, leading to the presentation of the appeal require an exposition first.

4. The petitioner has stated that he is in the business of providing works contract services under the aegis of his proprietorship concern, M/s Chandan Deka, which has its Principal Place of Business at Guwahati, District – Kamrup [Metro]. The petitioner has stated that during the Financial Year : 2014-2015, the petitioner was engaged in providing works contract services to several Government departments like Irrigation Department, Government of Assam; Assam Integrated Flood & River Bank Risk Management Agency; North-East Frontier Railway; etc. It is the contention of the petitioner that the said authorities fall outside the purview of Service Tax regime in terms of Mega Exemption Notification no. 25/2012-ST dated 20.06.2012, as amended, vide S. no. 12A of Notification no. 09/2016 dated 01.03.2016.

5. On 05.11.2019, the petitioner was served with a Demand-cum-Show Cause Notice on the grounds of contravention of provisions of Sections 66B, 68, 69

and 70 of the Finance Act, 1994 read with Rules 4, 6 and 7 of the Service Tax Rules, 1994 inasmuch as the petitioner provided taxable services without taking Service Tax Registration and without payment of Service Tax during the Financial Year : 2014-2015 amounting to Rs. 42,36,212/- [including cesses]. By the Demand-cum-Show Cause Notice, the petitioner was called upon to show cause as to why the Service Tax amount of Rs. 42,36,212/- shall not be recovered from him for services rendered during the Financial Year : 2014-2015 by invoking the extended period as per the proviso to sub-section [1] of Section 73 of the Finance Act, 1994, as amended [hereinafter referred to as 'the Finance Act', for short], along with interest, penalty, etc. Admittedly, the petitioner did not submit any Reply to the said Demand-cum-Show Cause Notice dated 05.11.2019.

6. By an Order-in-Original dated 16.03.2022, the jurisdictional Central Excise Officer [the respondent no. 4] confirmed the demand of Service Tax amounting to Rs. 42,36,212/- including Education Cess and Secondary & Higher Education Cess for the period from 01.04.2014 to 31.03.2015 in terms of Section 73[2] of the Finance Act. The jurisdictional Central Excise Officer had also ordered for payment of interest on the confirmed amount at applicable rates along with penalties of Rs. 10,000/- each under Section 77[1] and Section 77[2] respectively of the Finance Act for violation of Section 69 and Section 70. In addition, a penalty of Rs. 42,36,212/- had also been imposed in terms of Section 78 of the Finance Act. The noticee, that is, the petitioner was also given an option to pay reduced penalty equivalent to 25% of the amount of penalty imposed under Section 78, subject to the condition that the noticee would deposit the amount of Service Tax and cess[s] confirmed under Section 73[2] of the Finance Act, along with interest in terms of Section 75 and the entire amount of penalty as imposed under Section 77[1] and Section 77[2] as well as reduced penalty imposed under the proviso to Section 78 of the Finance Act, within a period of thirty days from the date of receipt of the Order-in-Original. As per the Order-in-Original, in

response to the Demand-cum-Show Cause Notice and a subsequent Reminder dated 08.07.2021, the petitioner-noticee did not submit any Reply or make any correspondence in that connection. Dates of personal hearing were fixed on 01.03.2022, 02.03.2022 and 04.03.2022 but the noticee did not appear for personal hearing also on any of the three dates as fixed.

7. The Order-in-Original dated 16.03.2022 was directed to be served or communicated to the petitioner by an endorsement of the Assistant Commissioner [A&E] on 16.03.2022. The petitioner instead of paying the reduced penalty in terms of the Order-in-Original dated 16.03.2022, had opted to present an appeal under sub-section [3A] of Section 85 of the Finance Act.

8. Section 85 of the Finance Act which is contained in Chapter V of the Finance Act, has provided for appeals as under :-

> **85. Appeals to the Commissioner of Central Excise [Appeals]**. –
>
> [1] Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Principal Commissioner of Central Excise may appeal to the Commissioner of Central Excise [Appeals].
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> [2] Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.
>
> [3] An appeal shall be presented within three months from the date of receipt of the decision or order of such adjudicating authority, relating to service tax, interest or penalty under this Chapter, made before the date on which the Finance Bill, 2012 receives the assent of the President :

Provided that the Commissioner of Central Excise [Appeals may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months.

[3A] ***An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority***, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter :

Provided that the Commissioner of Central Excise [Appeals] may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, ***allow it to be presented within a further period of one month***.

[4] The Commissioner of Central Excise [Appeals] shall hear and determine the appeal and, subject to the provisions of this Chapter, pass such orders as he thinks fit and such orders may include an order enhancing the service tax, interest or penalty :

Provided that an order enhancing the service tax, interest or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

[5] Subject to the provisions of this Chapter, in hearing the appeals and making orders under this Section, the Commissioner of Central Excise [Appeals] shall exercise the same powers and follow the same procedure as he exercises and follows in hearing the appeals and making orders under the Central Excise Act, 1944] [1 of 1944].

[emphasis supplied in bold]

9. It is the case of the petitioner that he presented the appeal in Form ST-4, as stipulated by Rule 8 of the Service Tax Rules, 1994, before the Appellate Authority in proper form on 20.06.2022 and the office of the Appellate Authority acknowledged the presentation of the appeal of the petitioner under its signature and seal on 20.06.2022.

10. The Appellate Authority has adverted to the events in detail before holding that presentation of the appeal preferred against the Order-in-Original dated 16.03.2022 preferred by the petitioner was beyond time. As the dismissal of an appeal against an Order-in-Original by the Appellate Authority on the ground of delay did not result in merger of the Order-in-Original with the Order dated 03.08.2023 whereby the appeal was dismissed on the ground of delay, the facts delineated in detail in the Order dated 03.08.2023 by the Appellate Authority are not required to be reiterated herein, except the relevant details.

11. In the Order dated 03.08.2023, the Appellate Authority had recorded that the appeal was filed on 20.06.2022. By referring to the provisions contained in sub-section [3A] of Section 85 of the Finance Act, the Appellate Authority had recorded that the appeal presentation by the petitioner was beyond the aggregate period of three months as it was after expiration of the normal period of limitation of two months and the extended period of limitation of one month thereafter, subject to showing sufficient cause. The Appellate Authority had recorded that the normal period of limitation of two months for presenting the appeal against the Order-in-Original dated 16.03.2022 expired on 16.05.2022 and the extended period of limitation of one month thereafter expired on 15.06.2022. Therefore, the appeal filed by the petitioner on 20.06.2022 was beyond time.

12. Sub-section [3A] of Section 85 has prescribed that an appeal shall be presented within two months from the date of receipt of the decision or order

of the Adjudicating Authority. If the date of decision or order of the Adjudicating Authority and the date of receipt of the decision or order of the Adjudicating Authority are same, the period of two months for the normal period of limitation of two months and thereafter, the period of one month for the extended period are to be counted from the date of such receipt. But if the date of the decision or order is different from the date of receipt of the decision or order, the period of limitation for presentation of the appeal is to be counted from the date of such receipt.

13. The learned Senior Counsel and Special Counsel, CGST, based on records available at the end of the Department, has submitted that the Order-in-Original was sent to the address of the petitioner by registered post on 24.03.2022. In support, he has placed the relevant page of the postal despatch register, which reflects that the copy of the Order-in-Original was sent for communication to the petitioner on 24.03.2022 by registered post. He has submitted that the Department does not have any record as regards the date of delivery. The petitioner has contended that the copy of the Order-in-Original dated 16.03.2022 was received by him on 21.04.2022. As it is a fact that the copy of the Order-in-Original dated 16.03.2022 was sent for communication to the petitioner on 24.03.2022, then, by no stretch, the copy of the said Order-in-Original could not have been received by the petitioner on any date earlier to 24.03.2022. If it is taken as an extreme case, for the sake of argument, that the petitioner had received the copy of the Order-in-Original on 24.03.2022 itself, then the period of limitation is to be counted by taking the date of communication, 24.03.2022 as the date of cause of action for presentation of the appeal.

14. For the purpose of the instant case, the provision of sub-section [1] of Section 37C is of relevance and the same is quoted hereinbelow :-

> [1] Any decision or order passed or any summons or notices issued under this Act or the rules made thereunder, shall be served,—
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> [a] by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgment due or by speed post with proof of delivery or by courier approved by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963, to the person for whom it is intended or his authorized agent, if any;
>
> [b] if the decision, order, summons or notice cannot be served in the manner provided in clause [a], by affixing a copy thereof to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended;
>
> [c] if the decision, order, summons or notice cannot be served in the manner provided in clauses [a] and [b], by affixing a copy thereof on the notice-board of the officer or authority who or which passed such decision or order or issued such summons or notice.

15. Section 9 of the General Clauses Act, 1897 has prescribed for commencement and termination of time. The rule is well established that where a particular time is given from a certain date within which an act is to be done, the day on that day is to be excluded; the effect of defining the period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day. If the normal period of limitation of two months under sub-section [3] of Section 85 of the Finance Act is to be counted with the date of communication of the Order-in-Original as 24.03.2022, then the period of two months is to be counted by excluding 24.03.2022 and by including last day when the period of two month would

expire. Thus, in the present case, the normal period of limitation of two months for presentation of the appeal had expired on 24.05.2022.

16. The Commissioner of Central Excise [Appeal] as the Appellate Authority has been vested with the power to allow presentation of the appeal within a further period of one month, provided he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within a period of two months. In the above view of the matter, the extended period of limitation would have expired on 24.06.2022.

17. It is true that the obligation to show sufficient cause is always upon the appellant if the appeal is presented beyond the ordinary period of limitation and within the period, which can be condoned under the proviso to sub-section [3A] of Section 85 of the Finance Act. It is not specifically laid down in sub-section [3A] of the Section 85 that the cause, which is to be sufficient, is to be explained in a separate application. The cause can also be explained in the memo of appeal.

18. Mr. Mishra, learned counsel for the petitioner has fairly submitted that in the memo of appeal, the petitioner did not offer any explanation as regard the reason[s] for the delay beyond two months, with a prayer to condone the delay, which had occurred in presentation of the appeal before the Appellate Authority.

19. From the above discussion, it has clearly emerged that though the appeal was not presented by the petitioner within the normal period of limitation of two months and was presented beyond a period of two months, but, before expiry of three months from the date of communication of the date of Order-in-Original. In other words, the appeal presented on 20.06.2022 was before expiry of three months from the date of communication of the Order-in-Original dated 16.03.2022 to the petitioner, even if the date of its receipt is

taken as 24.03.2022. By the Order-in-Original, the liability with which the petitioner has been saddled with by the Order-in-Original has already been mentioned above. In view of dismissal of the appeal of the petitioner on the ground of limitation, which order has not merged with the Order-in-Original, it is the petitioner who is to suffer prejudice if he is deprived of an opportunity to assail the legality and validity of the Order-in-Original on merits.

20. This Court is of the considered view that merely for the reason that the petitioner as an appellant did not file any separate application along with the appeal, which was presented with delay, explaining the reasons for late presentation of the appeal, the petitioner should not be deprived of atleast one opportunity to explain the reasons why the appeal could not be presented within the normal period of limitation of two months and the same had to be presented beyond such normal period of limitation but within the extended period of limitation.

21. Order XLI of the Code of Civil Procedure, 1908 has provided for Appeals from Original Decrees. Sub-rule [1] of Rule 3A of Order XLI, CPC has prescribed that when an appeal is presented after the expiry of the period of limitation specified therefore, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period.

22. In this connection, the decision of the Hon'ble Supreme Court in **State of Madhya Pradesh and another vs. Pradeep Kumar and another, [2000] 7 SCC 372**, can be referred to.

23. In the context of sub-rule [1] of Rule 3A, the Hon'ble Court has observed as under :-

11. No doubt sub-rule [1] of Rule 3-A has used the word 'shall'. It was contended that employment of the word 'shall' would clearly indicate that the requirement is peremptory in tone. But such peremptoriness does not foreclose a chance for the appellant to rectify the mistake, either on his own or being pointed out by the court. The word 'shall' in the context need be interpreted as an obligation cast on the appellant. Why should a more restrictive interpretation be placed on the sub-rule? The Rule cannot be interpreted very harshly and make the non-compliance punitive to an appellant. It can happen that due to some mistake or lapse an appellant may omit to file the application [explaining the delay] along with the appeal.

12. It is true that the pristine maxim *vigilantibus non dormientibus jura subveniunt* [law assists those who are vigilant and not those who sleep over their rights]. But even a vigilant litigant is prone to commit mistakes. As the aphorism 'to err is human' is more a practical notion of human behaviour than an abstract philosophy, the unintentional lapse on the part of a litigant should not normally cause the doors of the judicature permanently closed before him. The effort of the court should not be one of finding means to pull down the shutters of adjudicatory jurisdiction before a party who seeks justice, on account of any mistake committed by him, but to see whether it is possible to entertain his grievance if it is genuine.

* * * * * *

19. The object of enacting Rule 3-A in Order 41 of the Code seems to be two-fold. First is, to inform the appellant himself who filed a time-barred appeal that it would not be entertained unless it is accompanied by an application explaining the delay. Second is, to

> communicate to the respondent a message that it may not be necessary for him to get ready to meet the grounds taken up in the memorandum of appeal because the court has to deal with application for condonation of delay as a condition precedent. Barring the above objects, we cannot find out from the Rule that it is intended to operate as unremediably or irredeemably fatal against the appellant if the memorandum is not accompanied by any such application at the first instance. In our view, the deficiency is a curable defect, and if the required application is filed subsequently the appeal can be treated as presented in accordance with the requirement contained in Rule 3-A Order 41 of the Code.
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> 20. In the result we allow this appeal and set aside the impugned judgment. The matter shall now go back to the High Court for disposal of the application to condone the delay in filing the second appeal. If the explanation was found satisfactory to the High Court the second appeal will have to be disposed of in accordance with law. This appeal is disposed of accordingly.

24. As per sub-section [5] of Section 85 of the Finance Act, subject to the provisions of Chapter V of the Finance Act, the Appellate Authority, that is, the Commissioner of Central Excise [Appeals] in hearing the appeals and making orders under Section 85 shall exercise the same powers and follow the same procedure as he exercises and follows in hearing the appeals and making orders under the Central Excise Act 1944.

25. The procedure in appeal has been delineated in Section 35A of the Central Excise Act, 1944. As per sub-section [1] of Section 35A, the Commissioner [Appeals] shall give an opportunity to the appellant to be heard, if he so desires. As per sub-section [2] thereof, the Commissioner [Appeals] may, at

the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if the Commissioner [Appeals] is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable. As per sub-section [5] of Section 35A, on the disposal of the appeal, the Commissioner [Appeals] shall communicate the order passed by him to the appellant and other authorities. It is inherent in the prescription of Section 35A for the Appellate Authority to provide a reasonable opportunity to an appellant.

26. This Court is of the considered view that the same principle, as outlined in **Pradeep Kumar** [supra], is applicable on all fours in case of appeals of the present nature presented wherein the proviso to sub-section [3A] of Section 85 of the Finance Act is found to have attracted. In other words, if an appeal is sought to be presented beyond the normal period of two months but within a further period of one month without providing any explanation for the period of delay occurred in presentation either in the memo of appeal, or in a separate application, then the Appellate Authority should provide atleast one opportunity to the appellant to explain the delay showing sufficient cause.

27. The Appellate Authority is found to have maintained silence in the matter of condonation of delay in presentation of the appeal on behalf of the petitioner on 20.06.2022 despite the appeal was presented within the extended period of limitation. If the Appellate Authority finds that the appeal presented by the petitioner within the extended period of limitation is without any application for condonation of delay, then before dismissing the appeal as time-barred, even in the absence of any explanation as regards the delay caused in the memo of appeal, the Appellate Authority is cast with an obligation to provide atleast one opportunity to the appellant, that is, the petitioner to submit an application to explain the reasons which caused the delay in presentation of the appeal, if the appellant intents to do so. It is only after grant of such an opportunity and non-filing of an application by the applicant for condonation

of delay, the Appellate Authority should have proceeded to dismiss the appeal on the ground of delay. If in the event the appellant after being so allowed, submits an application explaining the reasons for delay then it is incumbent on the part of the Appellate Authority to consider the explanation provided by the appellant for the period of delay and depending upon the satisfaction reached on such explanation, to proceed to take a decision as regards presence of sufficient cause or otherwise.

28. Having not proceeded in the afore-stated manner, the Order dated 03.08.2023 is found to be not sustainable in law and is liable to be set aside and quashed. It is accordingly, set aside and quashed.

29. In view of setting aside and quashing of the Order dated 03.08.2023, the matter stands reverted back to the Appellate Authority. The Appellate Authority shall provide an opportunity to the appellant to file an application for condonation of delay wherein the appellant can provide the explanation as to why the period of delay occurred beyond 24.05.2022 is required to be condoned. If such an application is filed and the explanation is found satisfactory to the Appellate Authority then the appeal presented by the petitioner has to be disposed of in accordance with law. If, on the other hand, the Appellate Authority reaches a view that the appellant has failed to show sufficient cause, then an appropriate order is to be passed.

JUDGE

Comparing Assistant